O. Motor ~~Spirit~~ Spirit Rationing | 53

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Legal Dept
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Subject:— Opinions regarding

The Motor Spirit Rationing

Order 1941

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C O N T E N T S

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Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions regarding the motor spirit Rationing Order, 1941.	
1.	O. 504 22-8-53	39 cases regarding breakers of the above order Whether it would be possible to institute all or any of the cases with the help of fresh evidences.	1-14

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5 Cs.

These are in all 39 cases regarding breaches of the Motor Spirit Rationing Order, 1941 alleged to have been committed by Messrs. Saleh and Patel Motor Company, Surat. One similar case for breach of clause 26 of the Motor Spirit Rationing Order, 1941 was tried in the court of the Surat City Magistrate in which the Manager of the firm was acquitted and on the advice of the Government Pleader, High Court, Government decided not to file an appeal. The Deputy Superintendent of Police, Surat, is of the opinion that the remaining thirty nine cases have also the same lecuna for which the test case failed and that prosecution is not in a position to prove the essential ingredients of the offence viz., that the petrol acquired against the coupons was used for purposes other than those specified in the application. The papers of investigation have been forwarded to this Department for advice whether it would be possible to institute all or any of the cases with the help of the eivdence available in these papers.

0 Olpad Criminal case No. 6/60 (including Criminal Cases Nos. 7/50,8/50,10/50 and 11/50

In case No. 6/50 accused are alleged to have committed breach of clause 12 of the Motor Spirit Rationing Order, 1941 in that he obtained six gallons of petrol per day for the period from 1st November 1947 to 31st January 1948 from the Regional Transport Officer, Ahmedabad for four return trips on Sayan-Olpad Road but performed only two return trips. The facts and offences in criminal cases Nos. 7/50, 8/50 10/50 and 11/50 are similar excepting that the periods for which petrol was obtained differ. The applications made by the Company are not in the papers. but the Police Prosecutors have stated with reference to case Nos. 6,7 and 8 that petrol for different routes was applied for. If the accused have used the petrol for two trips and also for the other routes mentioned in the application, then prosecutions are not likely to succeed as it is the same ground on which criminal case No. 175 of 1950 in the Court of Surat City

First Class, Magistrate failed. In the other two cases viz. Nos. 10/50 and 11/50 the Police Prosecutor has stated that there is no application or order in case No.11/50 and there are orders but no application in case No.10/50. Case No. 11/50 is not therefore likely to stand. As regards the second case the copy of the order is not in the papers and it is difficult to express any opinion unless it is persued. Clause 12 of the Motor Spirit Rationing Order, 1941 provides that an Area Rationing Authority may when issuing coupons to any person attach conditions or instructions thereto or may communicate in writing to such person the conditions or instructions governing the use of the coupon. This clause is only an enabling clause as it empowers the Area Rationing Authority to attach conditions when issuing coupons but the clause does not provide that the person to whom coupons are issued shall comply with such condition. The offence would therefore be under caluse 26(b) of the Order and not under clause 12. The difficulty is that the coupons are not availab It is not clear from the papers what kind of coupons were given but it seems ordinary coupons as mentioned in clause 9(3) must have been issued. In the test case the clerk of the Regional Transport Officer's Office, Baroda, stated that the coupons were issued bus-wise and not route-wise. The coupon in Form D also makes this clear. There is no evidence in these papers regarding the vehicle numbers for which coupons were issued. The exact distance between Sayan and Olpad is not mentioned. Criminal Cases Nos. 6/50, 7/50, 8/50 and 11/50 are not likely to succeed. In case No. 10/50 the orders which are said to be at S. Nos. 219.220 may be called for along with the information regarding exact distance, how much petrol was required per trip per day etc.

Olpad Criminal Case No. 19/50 (including Nos. 5/50,12/50 13/50, 15/50 and 16/50

It is alleged that the accused operated only two returns trips on the Kim-Bodhan route when they have obtained 13 gallons of petrol per day for three return trips. The

offences are said to be punishable under caluse 12 of the Motor Spirit Rationing Order. The period for which the coupons were given is different in each of the cases. In all these cases except case No. 13 of 1950 several routes are mentioned in the application as stated by the Police Prosecutors (The applications are not in the papers). In view of this, these cases being very similar to the one which has failed, are not likely to succeed. In case No.13/50 it is stated that there are no application and order. The coupons are not available. That case will also not succeed.

Olpad Criminal Case No.3/50(including No.28/50, 29/50 30/50 and 31/50)

In case No. 3/50 it is alleged that Shri M.E.Saleh obtained 800 gallons of petrol from the Area Rationing Authority, Navsari for operating two return trips daily on Kathor Sayan Olpad route between 1st January 1944 to 31st December 1944 but this service was not operated and he has therefore contravened clause 26(a) and 28 of the Motor Spirit Rationing Order, 1941. There is no application or order in this case. The coupons are not available for production . In Olpad Criminal Cases No. 28/50, 29/50 30/50 and 31/50 the offences alleged are the same in respect of the same route but for different periods and the number of gallons obtained are also different. In all these cases neither the applications nor orders are available. Clause 26(a) of the Motor Spirit Rationing Order inter alia provides that no person shall use or permit use of Motor Spirit, acquired by him against the surrender of coupons for a purpose other than that to which the coupon relates or for purpose other than that which was specified in any application in response to which the coupons were issued. As the coupons, applications and orders are not available for production in the court, prosecution will not be able to prove their case. Besides the witnesses have stated that the service from Kathor was operated by playing only one bus which made two trips and whenever passengers were not available the bus did not cover

the entire route. It is admitted by even the ex-employees that the Company had their garage at Kathor and buses used to start from there. Prosecution in these cases are not likely to succeed.

Chorasi Criminal Case No. 5/50

In this case it is alleged that the 1945 the accused Shri Saleh obtained(five thousand)5000 gallons of petrol from the Area Rationing Authority, Ahmedabad and Navsari and the Provincial Teansport Authority out of which 260 gallons were used for the Ashwanikumar Bodhan Boat Service in September and October 1945 and thereby committed a breach of cluse 26(a) and 28 of the Motor Spirit Rationing Order. Clause 26 refers to use of Motor Spirit obtained against the surrender of coupons for a purpose other than that authorised and clause 28 refers to use of coupons for a purpose other than authorised. The ingredients of the offences under both the clauses are the same. The charge seems to be too general in that it is not stated for which routes the 5000 gallons were issued and for which routes short supply was used. The Police Sub-Inspector has written at page 50 that he would rely on the evidence of some six persons mentioned at that page for proving misuse for the boat. The statements of these persons do not appear to be in the papers. The case does not seem to be fit for filling prosecution.

CC, Div. Criminal Case No. 21/50 (also cases Nos. 171 and 176 of 1950 240/49, 247/49, and 248/49).

Criminal Case No. 21/50 relates to the misuse of 670 gallons of petrol out of 3670 gallons obtained by the Company from the Area Rationing Authority, Ahmedabad, for Orna-Surat route. Shri Saleh has stated that buses on this route were not plied from 16th October 1947 to 26th October 1947 because of bad road. The prosecution is proposed under clauses 26(a) of 28. In the application many routes are mentioned and therefore the case is not likely to succeed. Cases Nos. 240, 247 and 248 of 1949 are also of th

same type in that petrol was obtained for Orna-Surat route but the service was not operated. In these three cases the Police Prosecutor says that there are no applicarions or orders. These cases are therefore not likely to succeed.

Case No. 176/50 is similar to Case No.21/50 where many routes are mentioned in the application. This case is not therefore likely to succeed.

Case No. 171/50 In this case 34 gallons of petrol per day was obtained for operating six return trips on Orna-Surat route during 1st November 1947 to 31st January 1948 from the Area Rationing Authority, Ahmedabad but no trip was operated. It is not stated whether the application was for various routes. If the application was for one route, this case is likely to succeed. A copy of the application referred to in the Police Prosecutor's letter may be called for.

C. Div Criminal Case No. 19/50

During 1st February 1945 to January 1946, the Company obtained from the Provincial Transport Authority, Bombay 5000 gallons of petrol and 2570 gallons from the Area Rationing Authority, Ahmedabd for operation-

(a) Orna-Surat

(b) Varad-Surat

(c) Sayan-Olpad, and

(d) Kim -Bodhan routes.

It is alleged that out of this petrol, 1009 gallons are misused. The Police Prosecutors have stated that it cannot be made out how this figure of 1009 is arrived at. As several routes are mentioned in the application the fate of the case would be the same as the test case. It is also stated that in 1945, coupons for 250 gallons were surrendered. This would be a factor which would go to strengthen the defence. It would be difficult to prove the charge unless the exact misuse is proved or unless it is definitely proved that the petrol was not used on other routes mentioned in the application. It is open to the accused to plead that the petrol was

used on other routes as the total quota asked for wwas not sanctioned. This was stated by the clerk Shri Trivedi in the test case.

Criminal Case No 237/49 (including 238,239 242 , 243 and 244 of 1949).

It is alleged that petrol issued for operating Morthana-Surat service was neither used for that service nor was it returned. Case Nos. 239/49 and 243/49 relate to the misuse of the same coupons for the same period. In all these cases there are no applications or orders. The coupons in general are not available for production in any case. (vide report of the Deputy Superintendent of Police at page 79). There is therefore no likelihood of succeeding in these cases.

(C. Div. Criminal Case No. 17/50(also case No. 32/50)

This case relates to the misuse of coupons obtained for Mangrol-Surat route. The Police Prosecutors have stated that there are no applications or orders. Coupons are also not available. The Area Rationing Authority has stated that coupons for 392 gallons were issued in the quarter May to July 1948. But it will have to be proved that this quota was granted separately for this route and not on a combined application. The evidence seems insufficient.)

C. Div. Criminal Cases Nos. 45/50 (also case No.90/49)

This relates to the misuse of petrol obtained for Orna-Barodli route. Criminal Case No. 90/49 was part heard and transferred to Surat City Magistrate's Court. In this case it is stated by the Policy Prosecutor that the petrol was used for other routes. The applications, orders or coupons are not available. Unless it can be shown that the application was for one route the case is not likely to succeed.

C. Div. Criminal Cases Nos. 36/50 and 44/50

In these cases it is proposed to prosecute the accused under section 420 Indian Penal Code for cheating Government by writing and auditing false accounts in respect of the

service Kathor-Sayana-Olpad in 1949 and 1945 to 1948. In the absence of any evidence to show misuse, the charge of cheating by maintaining false accounts cannot be substantiated.

Criminal Cases No. 236/49 and 249/49.

These cases relate to misuse in respect of Bhavni to Surat route. The accused say that this service did not ply for shortage of petrol and the petrol was used for plying buses on important routes. In both these cases the applications and the orders are not forthcoming. Unless the application can be said to be for one route the case is not likely to succeed.

It appears that all these 38 cases (out of 39 one is duplicate) have not been properly investigated. Shri Saleh's statement ought to have been separately recorded in respect of each case. Only one statement is recorded in respect of all cases and copies thereof attached to each case. The report of the Police Sub-Inspector is also made in a stereotype fashion. No attempt has been made to prove from the accounts or from taking the milage of the routes operated, that the petrol which was issued for various routes together could not have been exhausted on the routes that were operate It is common ground that supply was not made according to the demand but according to the supply position. If the petrol was not sufficient for running all the routes stoppage of service on some routes or running of less trips cannot be objected to. Even though coupons were issued bus-wise and not route-wise that would not affect the cases as clause 9(3) makes it clear that when the coupon is issued in respect of a service of stage carriage covered by a permit under section 48 of the Motor Vehicles Act, 1939, then the coupon shall be valid in respect of any vehicle included in that service.

Along with the papers the applications which are most important are not sent. Only case No. 90/49 seems to have been filed in the court the others, it seems, are still to be filed. The Magistrate's finding regarding law appears to be correct except that the offence falling then under jurisdic-

tion of the Baroda State would be punishable under section 8 of the Baroda Essential Commodities and Cattle (Control) Act and not under the Essential Supplies (Temporary powers) Act.

Sd/-

O.C.

Secretary to Government.

U.R. to H.D. No. G-504, dated the 22nd August 1953.

Mjr/14/8/